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EUROPEAN SOCIAL CHARTER

Addendum to the
11th National Report on the implementation
of the European Social Charter
submitted by

THE GOVERNMENT OF NORWAY

(Article 28
for the period
01/01/2009 – 31/12/2012)

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CYCLE 2014

Question 1: For how long lasts the extended dismissal protection for workers representatives, who are dismissed unlawfully?

As mentioned in the report, the employee's protection against unfair dismissal has been continued in the revised Working Environment Act of 2005, Sections 13-1, 15-7 and 15-14. There are general rules that apply in dismissal cases. A dismissal must be objectively justified. The courts will take into consideration that the employee is a shop steward when assessing if a dismissal is objectively justified.

In addition, the most relevant Basic agreement in private sector (between the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise (LO-NHO)), provides an extended protection against dismissals of shop stewards compared to the Working Environment Act. According to the Basic Agreement 2014-2017 section 5-11 the minimum period of notice is three months in cases of dismissals of shop stewards due to workforce reductions or reorganisation. The requirement goes beyond the requirements in the working

Environment Act, which states in Section 15-3 that the period of notice the first ten years of a continuous employment relationship is less than three month, if nothing else is agreed upon in a written agreement.

There are other Basic agreements in private sector than the quoted one. However, the Basic agreement (LO-NHO) comprises the largest number of workers and have been a model for other agreements.

The Working Environment Act also applies to employments within the municipal sector (Local Government). The Basic agreement covering municipal sector has no special requirements as regards the period of notice for shop stewards. However, the period of notice for all permanent employment contracts is three months, according to the Basic collective agreement, Section 3.2.1, except when the Working Environment Act Section 15-3 states that the period is longer.

Neither the Basic agreement nor the Basic collective agreement in the state sector have special requirements as regard the period of notice for shop stewards. The Civil Servants Act, applicable in the state sector, however requires a period of three months of notice after one year of employment, cf. Section 9.

Question 2: What remedies are available to workers representatives who are dismissed unlawfully?

If a shop steward wants to initiate legal proceedings individually, the remedies generally available to an employee who believe himself unlawfully dismissed will be available. Disputes regarding the objectivity of a dismissal must be brought before the court for final decision. Section 17-1 of the Working Environment Act provides that the Civil Procedure Act and the Courts of Justice Act shall apply to such legal proceeding s.

Reference is made to the description of the Norwegian legislation in this respect in the Norwegian 10th report (2012), connected to Article 24.

There is a double-tracked system in private sector where the Basic agreement (LO-NHO) applies. In addition to a possible individual lawsuit, the union of the dismissed shop steward may put forward a lawsuit against the employer/enterprise. In such case, the union will be a party of the dispute, and the dispute must be brought before the special court for collective disputes, the Labour Court, for a final decision.

In Norway, the right to remain in ones position until a dispute is finally decided upon by the court, is an important part of the workers protection in general. This right applies in individual cases if the employee takes action within a certain time limit according to the Working Environment Law, Section 17-4 subsection 6. This right also applies when a shop steward takes such an action.

In addition, according to the Basic agreement (LO-NHO) the shop steward may remain in his position until the Labour Court has reached its final decision, if the union finds that the dismissal is unlawful and takes legal action within eight weeks after the shop steward has received the notice, cf. Section 5-11.

In the central state sector a decision of dismissal can not be put into force before the period is over when lodging a complaint is possible, a complaint has been finally rejected or a final decision have been taken by the court. That is if the employee has initiated legal proceedings within certain time limits, cf. Civil Servants Act, Section 19.

If the court finds the dismissal unlawful, the court shall, if so demanded by the employee, rule the dismissal invalid. The court may in special cases decide that the employment shall be terminated, if so demanded by the employer and it is clearly unreasonable that the employment should continue. If a dismissal is deemed to be in contravention of the law, the employee may claim compensation. Compensation shall be fixed at the amount the court deems reasonable in view of the financial loss, circumstances relating to the employer and employee and other facts of the case, cf. the Working Environment Act, Section 15-12. This provision applies i all sectors.